**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF IOWA**
**CEDAR RAPIDS DIVISION**

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| UNITED STATES OF AMERICA,<br>Plaintiff,<br>vs.<br>CEDRIC JARREAU HAWKINS,<br>Defendant. | No. 07-CR-35-LRR<br><br>**FINAL JURY INSTRUCTIONS** |

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

**INSTRUCTION NUMBER 1**

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

**INSTRUCTION NUMBER 2**

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdict should be.

**INSTRUCTION NUMBER 3**

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense and the law as I give it to you.

**INSTRUCTION NUMBER 4**

I have mentioned the word "evidence." The "evidence" in this case consists of the following: the testimony of the witnesses, including the defendant, and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by the lawyers are not evidence.

2. Anything that might have been said by jurors or the attorneys during the jury selection process is not evidence.

3. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

4. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.

5. Anything you saw or heard about this case outside the courtroom is not evidence.

During the trial, several documents, including transcripts of audio recordings and law enforcement reports, were referred to but they were not admitted into evidence and, therefore, they will not be available to you in the jury room during deliberations.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

**INSTRUCTION NUMBER 5**

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

**INSTRUCTION NUMBER** 6

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to each witness, including the defendant, who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

**INSTRUCTION NUMBER 7**

In a previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be "impeached" and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

You have heard evidence that [redacted] has been convicted of crimes. You may use that evidence only to help you decide whether you believe her and how much weight to give her testimony.

You have heard evidence that the defendant has been convicted of crimes. You may use that evidence only to help you decide whether you believe him and how much weight to give his testimony and as described in Instruction Number Eight.

You have heard evidence that [redacted] has an arrangement with the government under which she received consideration on her state charges for providing information to the government. This witness's testimony was received in evidence and may be considered by you. You may give this witness's testimony such weight as you think it deserves. Whether or not her testimony may have been influenced by receiving consideration on her state charges is for you to determine.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

**INSTRUCTION NUMBER 8**

You have also heard "other acts" evidence that the defendant was previously convicted of distributing crack cocaine. You may not use this "other acts" evidence to decide whether the defendant carried out the acts involved in the crime charged in the Indictment. In order to consider "other acts" evidence at all, you must first unanimously find, beyond a reasonable doubt, based on the rest of the evidence introduced, that the defendant carried out the acts involved in the crime charged in the Indictment. If you make this finding, then you may consider the "other acts" evidence to decide the defendant's intent, motive, knowledge and the absence of mistake or accident. "Other acts" evidence must be proven by a preponderance of the evidence; that is, you must find that the evidence is more likely true than not true. This is a lower standard of proof than proof beyond a reasonable doubt. If you find that this evidence is proven by a preponderance of the evidence, you should give it the weight and value you believe it is entitled to receive. If you find that it is not proven by a preponderance of the evidence, then you must disregard such evidence.

Remember, even if you find that the defendant may have committed other acts in the past, this is not evidence that he committed such an act in this case. You may not convict a person simply because you believe he may have committed other acts in the past. The defendant is on trial only for the crime charged, and you may consider the evidence of "other acts" only on the issue of his intent, motive, knowledge and the absence of mistake or accident.

**INSTRUCTION NUMBER 9**

You have heard testimony that the defendant made statements to certain witnesses in this case. It is for you to decide:

(1) whether the defendant made the statements and

(2) if so, how much weight you should give to them.

In making these two decisions you should consider all of the evidence, including the circumstances under which the statements may have been made.

**INSTRUCTION NUMBER** 10

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become an expert in some field may state his or her opinions on matters in that field and may also state the reasons for his or her opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used and all the other evidence in the case.

**INSTRUCTION NUMBER 11**

You have heard audio recordings of conversations. These conversations were legally recorded, and you may consider the recordings just like any other evidence.

As you have also heard, there are typewritten transcripts of the recordings I have just mentioned. Those transcripts also undertake to identify the speakers engaged in the conversations.

You were permitted to have the transcripts during the trial for the limited purpose of helping you follow the proceeding as you listened to the recordings, and also to help you keep track of the speakers. The transcripts, however, are not evidence. The recordings themselves are the primary evidence of their own contents.

Differences in meaning between what you hear in the recordings and read in the transcripts may be caused by such things as the inflection in a speaker's voice. You should, therefore, rely on what you hear rather than what you read when there is a difference.

**INSTRUCTION NUMBER** 12

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdict. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdict, in the same condition as it was received by you.

**INSTRUCTION NUMBER** 13

The Indictment in this case charges that the defendant committed a drug trafficking crime. The defendant has pleaded not guilty to the crime with which he is charged.

As I told you at the beginning of trial, an Indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find a defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crime charged.

There is no burden upon the defendant to prove that he is innocent.

**INSTRUCTION NUMBER 14**

The Indictment charges the defendant with distribution of cocaine base. This offense has two essential elements, which are:

*One,* on or about August 10, 2006, the defendant intentionally transferred a mixture or substance containing a detectable amount of cocaine base to another person; and

*Two,* at the time of the transfer, the defendant knew that it was a controlled substance, namely, cocaine base.

If all of the essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged in the Indictment; otherwise you must find the defendant not guilty of the crime charged in the Indictment.

**INSTRUCTION NUMBER** 15

You are instructed as a matter of law that cocaine base is a Schedule II controlled substance. During this trial, you have heard the terms "crack cocaine" and "a mixture or substance containing a detectable amount of cocaine base" referred to interchangeably. You are instructed that "crack cocaine" and "a mixture or substance containing a detectable amount of cocaine base" refer to the same substance. You must ascertain whether or not the substances in question were mixtures or substances containing a detectable amount of cocaine base. In so doing, you may consider all evidence in the case which may aid in the determination of that issue.

In determining whether the defendant is guilty of the offense charged in the Indictment, the government is not required to prove that the amount or quantity of cocaine base was as charged in the Indictment. The government need only prove beyond a reasonable doubt that there was some measurable amount of cocaine base involved.

If you find the defendant guilty of the offense charged in the Indictment, you will need to determine whether the quantity of cocaine base involved in the offense was 5 grams or more, or less than 5 grams.

The burden of proof is on the government to establish the quantity beyond a reasonable doubt.

For your information, one gram equals 1,000 milligrams, one ounce equals 28.35 grams, one pound equals 453.6 grams and one kilogram equals 1,000 grams.

**INSTRUCTION NUMBER 16**

The term "distribute" means to deliver a controlled substance to the possession of another person. The term "deliver" means the actual or attempted transfer of a controlled substance to the possession of another person. No consideration for the delivery need exist, and it is not necessary that money or anything of value change hands. The law is directed at the act of "distribution" of a controlled substance and does not concern itself with any need for a "sale" to occur.

**INSTRUCTION NUMBER 17**

If you find the defendant guilty of the offense charged in the Indictment, you will also need to determine whether the location at which the distribution of cocaine base took place was within 1,000 feet of the real property of a school. The 1,000-foot zone can be measured in a straight line from the school irrespective of actual pedestrian travel routes. The government does not have to prove that the defendant agreed, knew or intended that the offense would take place within 1,000 feet of a school.

**INSTRUCTION NUMBER** 18

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have said, it is entirely up to you to decide what facts to find from the evidence.

**INSTRUCTION NUMBER 19**

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

## INSTRUCTION NUMBER 20

An act is done "knowingly" if the defendant realized what he was doing and did not act through ignorance, mistake or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider the evidence of the defendant's acts and words, along with all other evidence, in deciding whether the defendant acted knowingly.

**INSTRUCTION NUMBER 21**

You will note the Indictment charges that the offense was committed "on or about" a certain date. The government need not prove with certainty the exact date or the exact time period of an offense charged. It is sufficient if the evidence established that an offense occurred within a reasonable time of the date or period of time alleged in the Indictment.

**INSTRUCTION NUMBER** 22

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

**INSTRUCTION NUMBER** 23

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

*First*, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

*Second,* it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because a verdict—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach a verdict.

*Third*, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

*Fourth*, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

*Finally*, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

**INSTRUCTION NUMBER 24**

Attached to these instructions you will find a Verdict Form and an Interrogatories Form. The Verdict Form and the Interrogatories Form are simply the written notice of the decisions that you reach in this case. The answers to the Verdict Form and the Interrogatories Form must be the unanimous decisions of the jury.

You will take the Verdict Form and the Interrogatories Form to the jury room, and when you have completed your deliberations and each of you has agreed on answers to the Verdict Form and the Interrogatories Form, your foreperson will fill out the Verdict Form and Interrogatories Form, sign and date them, and advise the Court Security Officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return such verdict as accords with the evidence and these instructions.

August 29, 2007
**DATE**

**LINDA R. READE**
**CHIEF JUDGE, U.S. DISTRICT COURT**
**NORTHERN DISTRICT OF IOWA**